



House of Representatives

File No. 345

General Assembly

February Session, 2002

(Reprint of File No. 222)

House Bill No. 5346
As Amended by House
Amendment Schedules "A"
and "B"

Approved by the Legislative Commissioner
April 4, 2002

AN ACT CONCERNING HYDROGEN PRODUCTION FACILITIES AND HYDROGEN CONVERSION TECHNOLOGY AND THE PROTECTION OF LONG ISLAND SOUND.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 16-245n of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2002*):

3 (a) For purposes of this section, "renewable energy" means solar
4 energy, wind, ocean thermal energy, wave or tidal energy, fuel cells,
5 landfill gas, hydrogen production and hydrogen conversion
6 technologies, and low emission advanced biomass conversion
7 technologies and other energy resources and emerging technologies
8 which have significant potential for commercialization and which do
9 not involve the combustion of coal, petroleum or petroleum products,
10 municipal solid waste or nuclear fission.

11 (b) On and after January 1, 2000, the Department of Public Utility
12 Control shall assess or cause to be assessed a charge of not less than

13 one-half of one mill per kilowatt hour charged to each end use
14 customer of electric services in this state which shall be deposited into
15 the Renewable Energy Investment Fund established under subsection
16 (b) of this section. On and after July 1, 2002, such charge shall be three-
17 quarters of one mill and on and after July 1, 2004, such charge shall be
18 one mill.

19 (c) There is hereby created a Renewable Energy Investment Fund
20 which shall be administered by Connecticut Innovations, Incorporated.
21 The fund may receive any amount required by law to be deposited
22 into the fund and may receive any federal funds as may become
23 available to the state for renewable energy investments. Connecticut
24 Innovations, Incorporated, may use any amount in said fund for
25 expenditures which promote investment in renewable energy sources
26 in accordance with a comprehensive plan developed by it to foster the
27 growth, development and commercialization of renewable energy
28 sources, related enterprises and stimulate demand for renewable
29 energy and deployment of renewable energy sources which serve end
30 use customers in this state. Such expenditures may include, but not be
31 limited to, grants, direct or equity investments, contracts or other
32 actions which support research, development, manufacture,
33 commercialization, deployment and installation of renewable energy
34 technologies, and actions which expand the expertise of individuals,
35 businesses and lending institutions with regard to renewable energy
36 technologies, provided such technologies do not relate to facilities, as
37 defined in section 16-50i, that cross Long Island Sound.

38 (d) The chairperson of the board of directors of Connecticut
39 Innovations, Incorporated, shall convene a Renewable Energy
40 Investments Advisory Committee to assist Connecticut Innovations,
41 Incorporated, in matters related to the Renewable Energy Investment
42 Fund, including, but not limited to, development of a comprehensive
43 plan and expenditure of funds. The advisory committee shall include
44 not more than twelve individuals with knowledge and experience in
45 matters related to the purpose and activities of said fund. The advisory
46 committee shall consist of the following members: (1) One person with

47 expertise regarding renewable energy resources appointed by the
48 speaker of the House of Representatives; (2) one person representing a
49 state or regional organization primarily concerned with environmental
50 protection appointed by the president pro tempore of the Senate; (3)
51 one person with experience in business or commercial investments
52 appointed by the majority leader of the House of Representatives; (4)
53 one person representing a state or regional organization primarily
54 concerned with environmental protection appointed by the majority
55 leader of the Senate; (5) one person with experience in business or
56 commercial investments appointed by the minority leader of the
57 House of Representatives; (6) one person with experience in business
58 or commercial investments appointed by the minority leader of the
59 Senate; (7) two state officials with experience in matters relating to
60 energy policy and one person with expertise regarding renewable
61 energy resources appointed by the Governor; and (8) three persons
62 with experience in business or commercial investments appointed by
63 the board of directors of Connecticut Innovations, Incorporated. The
64 advisory committee shall issue annually a report to such chairperson
65 reviewing the activities of the fund in detail and shall provide a copy
66 of such report to the joint standing committee of the General Assembly
67 having cognizance of matters relating to energy.

68 Sec. 2. (NEW) (*Effective from passage*) Notwithstanding any other
69 provision of the general statutes, no state agency, including, but not
70 limited to, the Department of Environmental Protection and the
71 Connecticut Siting Council, shall consider or render a final decision for
72 any applications relating to electric power line crossings or gas
73 pipeline crossings of Long Island Sound including, but not limited to,
74 electrical power line or gas pipeline applications that are pending or
75 received after the effective date of this section for a period of one year
76 after the effective date of this section.

77 Sec. 3. (NEW) (*Effective from passage*) (a) Any application for an
78 electric power line or gas pipeline crossing of Long Island Sound that
79 is considered by either the Department of Environmental Protection or
80 the Connecticut Siting Council after the creation of a comprehensive

81 environmental assessment and plan, shall additionally be evaluated
 82 for such application's: (1) Likelihood to impair the public trust in Long
 83 Island Sound based on the information contained in a comprehensive
 84 environmental assessment and plan; and (2) the extent to which the
 85 application is consistent with the recommendations of a
 86 comprehensive environmental assessment and plan.

87 (b) Notwithstanding any provision of the general statutes or any
 88 approval received pursuant to any other provision of law prior to the
 89 effective date of this section, no electrical power line crossing shall be
 90 constructed within Long Island Sound for a period of one year to allow
 91 for a comprehensive environmental assessment and plan to be
 92 completed. Nothing in section 2, 3 or 4 of this act shall be construed to
 93 affect projects in the mile-wide corridor across Long Island Sound,
 94 from Norwalk to Northport, New York, presently occupied by electric
 95 cables that cross the sound.

96 Sec. 4. (NEW) (*Effective from passage*) Notwithstanding any provision
 97 of the general statutes, the Connecticut Siting Council, within fifteen
 98 days of the effective date of this section shall submit the state's
 99 advisory opinion to the Federal Energy Regulatory Commission
 100 requesting that, on behalf of the state, the Federal Energy Regulatory
 101 Commission not approve any individual new electric power line
 102 crossing or gas pipeline crossings for one year to allow for completion
 103 of a comprehensive environmental assessment and plan, and that the
 104 Federal Energy Regulatory Commission avoid environmental damage
 105 to Long Island Sound to the greatest extent possible when licensing
 106 any future gas pipelines by considering the recommendations
 107 contained in a comprehensive environmental assessment and plan.

This act shall take effect as follows:	
Section 1	<i>July 1, 2002</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>from passage</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
Renewable Energy Investment Fund	Connecticut Innovations, Inc. (quasi-public)	See Below	See Below	See Below
Environmental Quality/GF	Department of Environmental Protection;	"	"	"
Consumer Council and Public Utility Control Fund	Connecticut Siting Council	"	"	"

Municipal Impact: None

Explanation

The bill adds hydrogen production and conversion technologies, provided that the technologies do not relate to facilities as defined in Section 16-50i that cross Long Island Sound, to the list of energy resources that can be a recipient of funding from the Renewable Energy Investment Fund administered by the Connecticut Innovations, Inc (CII). Expanding the use of the Fund could divert funds from one project to another. The overall impact is anticipated to be minimal. As of March, 20002, the Fund balance, including current commitments is \$4 million. Actual Fund revenue derived from the charge on electric bills was approximately \$15 million in FY 01. Revenues are expected to grow to \$22 million in FY 03.

The one year moratorium on consideration or the rendering of a final decision on applications relating to powerlines or pipelines crossing Long Island Sound by no state agency, including, but not

limited to the Department of Environmental Protection and the Connecticut Siting Council, will result in a minimal workload decrease and a corresponding fee decrease to the Department of Environmental Protection (DEP) and a minimal workload decrease to the Siting Council. The submittal of an advisory opinion by the Siting Council is also anticipated to be handled within normal budgetary resources. Any additional considerations by the DEP or Siting Council after the one-year period required in the bill, can be handled within normal budgetary resources.

However, the bill speaks to activities to be done after a comprehensive environmental assessment plan. There is no plan currently in statute or in the bill. It is not clear in the bill who or what agency will create this assessment and plan. sHB 5609 of the current session requires a comprehensive environmental assessment plan to be produced by the Institute of Sustainable Energy at Eastern Connecticut State University. The direct cost of this assessment and plan is estimated at \$150,000 to \$200,000.

House "A" concerns technologies that cannot be recipients of funding and does not change the impact of the bill.

House "B" concerns Long Island Sound crossing moratorium.

OLR Amended Bill Analysis

HB 5346 (as amended by House "A" and "B")*

**AN ACT CONCERNING HYDROGEN PRODUCTION FACILITIES
AND HYDROGEN CONVERSION TECHNOLOGY****SUMMARY:**

This bill establishes a one-year moratorium, effective upon passage, on consideration or final approval by state agencies of applications (including pending applications) to build an electric power line or gas pipeline across Long Island Sound. The bill affects, among others, the Connecticut Siting Council (CSC) and the Department of Environmental Protection (DEP).

The bill bars the construction of any electric power line within the Sound for one year to allow for a comprehensive environmental assessment and plan to be completed. (The bill does not specify who will prepare the plan.) This provision applies notwithstanding any provision of the statutes or any approval received before the bill's effective date. (These provisions are effective upon passage.) Any application for a gas pipeline or electric power line that CSC or DEP considers after the creation of the assessment and the plan must be evaluated on the application's (1) likelihood to impair the public trust in the Sound, based on information the assessment and plan contain; and (2) the extent to which the application is consistent with the assessment and recommendations in the plan.

The above provisions do not apply to projects located in the mile-wide corridor across Long Island Sound from Norwalk to Northport, New York that are currently occupied by electric cables.

Within 15 days of the bill's passage, CSC must submit an advisory opinion to the Federal Energy Regulatory Commission (FERC) on behalf of the state. The opinion must ask FERC (1) not to approve any individual new power line or gas pipeline crossings for one year to allow for the completion of the assessment and plan and (2) avoid environmental damage to the Sound to the greatest extent possible

when licensing any future gas pipelines, by considering the assessment and recommendations in the plan.

By law, Connecticut Innovations, Inc. (CII) administers the Renewable Energy Investment Fund to promote several renewable energy resources. The bill adds hydrogen production and conversion technologies to these resources so long as the hydrogen projects do not relate to facilities, such as electric transmission lines, that cross the Sound and are regulated by the Siting Council. (Among other things, hydrogen can be used to power fuel cells to produce electricity.) By law, CII, a quasi-public agency, can use the fund to promote investment in renewable energy resources, stimulate demand for them, and encourage their deployment. Money in the fund comes from a charge on electric bills.

EFFECTIVE DATE: Upon passage for the moratorium and related provisions; July 1, 2002, for the CII provisions.

*House Amendment "A" bars CII from funding hydrogen projects related to facilities regulated by the Siting Council that cross Long Island Sound.

*House Amendment "B" adds the moratorium and related provisions.

BACKGROUND

Related Bills

sSB 342, "An Act Concerning the Financing of Renewable Energy Projects," favorably reported by the Energy and Technology Committee, allows (1) CII to make advance commitments backed by the renewable energy charge and (2) the Connecticut Development Authority to issue bonds based on such commitments, with the proceeds going into the fund.

sHB 5712, "An Act Concerning Renewable Energy and Energy Conservation," favorably reported by the Environment Committee, increases the renewable energy charge from 0.1 to 0.125 cents per kilowatt-hour as of July 1, 2004.

Related Case Law

It appears possible that the bill's one-year moratorium might be challenged as an unconstitutional taking of property without compensation. Both the U.S. Supreme Court and the Connecticut Supreme Court recognize that property can be unconstitutionally taken through regulatory action (*Cohen v. City of Hartford*, 244 Conn. 206 (19..)) *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987).

Because there appears to be no controlling case directly on point, it is not clear whether the moratorium established under the bill would be an unconstitutional taking, and if so, how the court would determine damages.

It should be noted that courts in other jurisdictions have held that moratoria do not constitute a taking where the moratorium has a definite time limit and meets certain other criteria (*The Takings Issue*, R. Meltz, D.H. Merriam, and R. M. Frank 1999). And at least one court has held that revocation of a permit to perform activities on land held in public trust does not constitute a taking. (*Marine One, Inc. v. Manatee County*, 11th Circuit Court of Appeals 898 F2nd 1490 (1990)).

These cases did not address other issues that may be relevant to this bill's constitutionality, such as interstate commerce or restrictions on projects that have already been approved.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Change of Reference

Yea 14 Nay 0

Environment Committee

Joint Favorable Report

Yea 28 Nay 0